

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendments to Chapter 16-316
Hawaii Revised Statutes

June 26, 1996

SUMMARY

1. §16-316-4(d) is amended.
2. §16-316-9(e) is amended.
3. §16-316-14(a) is amended.
4. §§16-316-22(b) and 16-316-22(c) are amended.
5. §16-316-23 is amended.
6. §16-316-28(c) is amended.
7. §16-316-30(d) is amended.
8. §§16-316-31 and 16-316-32 are amended.
9. §16-316-33(a) is amended and §16-316-33(e) is added.
10. §16-316-34 is amended.
11. §§16-316-44 and 16-316-45 are amended.
12. §16-316-47 to §16-316-50 are amended.

§16-316-4 Legal counsel. ***

(d) Withdrawal of legal counsel in the absence of a concurrent substitution shall be effective only upon the approval of the panel or hearings officer and shall be subject to Rule 1.16 of the Hawaii Rules of Professional Conduct and other applicable law.

[Eff 1/21/93; am 8/31/96] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-9 Format and certification of pleadings. ***

(e) The original and one copy of all pleadings motions, memoranda, and other documents shall be filed by personal delivery or by mail addressed to the panel; provided, however, that the original and five copies shall be filed where a party files a motion for reconsideration, a request for review hearing, or a response to a request for review hearing. [Eff 1/21/93; am 8/31/96] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-14 Time. (a) Unless otherwise provided by this chapter, in computing any period of time prescribed or allowed by this chapter, the day of the act, event, or default after which the designated period of time is to run, shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday in the State, in which event the period runs until the next day which is neither a Saturday, Sunday, nor a holiday.

[Eff 1/21/93; am 8/31/96] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-22 Decision, generally. (a) Unless otherwise provided, every decision and order issued by the panel shall be in writing or stated in the record. Where the case has been contested and the decision is adverse to any party, the decision shall be accompanied by separate findings of fact and conclusions of law.

(b) Final decisions issued by the panel shall be signed by all members of the panel participating in decisionmaking. Panel members may forward their signatures by facsimile transmission to the panel's office.

(c) The panel shall cause a filed copy of the decision and order together with the findings of fact and conclusions of law to be transmitted by hand or by certified or registered mail, return receipt requested, to each party within a reasonable time. [Eff 1/21/93; am 8/31/96] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-12, 674-6)

§16-316-23 Motion for reconsideration. Within seven days after receipt of any final order, any party may move the panel to reconsider its final order or decision. The motion shall be filed with the panel and shall state specifically what points of law or fact the panel has overlooked or misunderstood together with brief arguments on the points raised. No answer or reply to the motion shall be considered unless requested by the panel. Oral argument on the motion shall be within the discretion of the panel. Only one motion for reconsideration may be filed by each party and the filing of the motion shall not operate as a stay of the panel's final order or decision. [Eff 1/21/93; am 8/31/96] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-28 Dismissal of claim. ***

(c) The panel or hearings officer may, upon the motion of any party, or sua sponte, issue a notice of proposed dismissal to any claimant if:

- (1) After conducting an investigation of the claim, the investigator concludes that the claim is without merit or that the panel lacks jurisdiction to hear the claim; or
- (2) The claimant fails to attend hearings or otherwise fails to maintain contact, provided that reasonable efforts have been made to contact the claimant and the claimant has not responded within thirty days to a letter sent by the panel or hearings officer to the claimant's last known address; or
- (3) The claimant has failed to prosecute or otherwise pursue the claim within six months from the filing of the claim, excluding periods of delay caused by a party other than the claimant; or
- (4) The claimant fails to comply with this chapter or any order of the panel or hearings officer.

The notice of proposed dismissal shall set forth the basis for the proposed dismissal and shall provide an opportunity for the claimant to request a hearing to contest the proposed dismissal at least fifteen days prior to the actual dismissal. The notice of proposed dismissal shall also provide that in the event the claimant does not request a hearing to contest the proposed dismissal within the time period specified in the notice of proposed dismissal, the panel or hearings officer may thereafter issue an order dismissing the proceedings with prejudice. If a claimant requests a hearing to contest the proposed dismissal within the time period specified in the notice of proposed dismissal, the panel or hearings officer shall schedule a hearing in accordance with this chapter or dissolve the notice of proposed dismissal. The claimant shall have the burden of showing why the claim should not be dismissed pursuant to this section.

[Eff 1/21/93; am 8/31/96] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-9, 91-9.5, 674-6)

§16-316-30 Panel's investigation, fact-finding, and subpoena power. ***

(d) An investigation shall be concluded as expeditiously as possible.
[Eff 1/21/93; am 8/31/96] (Auth: HRS §§91-2, 674-6, 674-8) (Imp: HRS §§91-2, 674-6, 674-8)

§16-316-31 Investigative report. The panel's investigative staff shall prepare a confidential investigative report on the claim. Unless otherwise provided by law, the investigative report shall remain confidential and shall not be available to the public. Notwithstanding the confidentiality of the investigative report, a copy of such report may be made available to the parties where the panel or hearings officer determines that it would further the purposes of this chapter. [Eff 1/21/93; am 8/31/96] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-32 Notice of hearing. Upon completion of the investigative report, the claim shall be set for hearing. All parties shall be given written notice of the hearing, which shall include the date, time, and place of hearing. The notice shall further apprise each party of the right to retain legal counsel if so desired. [Eff 1/21/93; am 8/31/96] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-9, 91-9.5, 674-6, 674-8)

§16-316-33 Prehearing statement. (a) Two days prior to the prehearing conference or ten days prior to the hearing, whichever occurs first, each party shall file with the panel or hearings officer a prehearing statement disclosing the following information:

- (1) A statement of facts;
- (2) Admitted facts;
- (3) All claims for relief and all defenses advanced by the party submitting the prehearing statement and the type of evidence expected to be offered in support of each claim and defense;
- (4) The identity of all witnesses to be called by the party, including their addresses and phone numbers, if known, and a general statement concerning the nature of the testimony expected;
- (5) Whether an offer of settlement has been made and the progress of settlement; and
- (6) A list of all exhibits, including, but not limited to documents, photographs, and other tangible evidence to be introduced at the hearing. A copy of each exhibit shall be attached to the prehearing statement.

(b) All prehearing statements shall be continually amended and each party is under a duty to update information contained in the prehearing statement as and when it becomes available.

(c) The failure to disclose information in the prehearing statement or the failure to update such information may result in the evidence subject to disclosure not being permitted to be introduced at the hearing.

(d) A copy of the prehearing statement with all exhibits attached, as well as any amendments to the prehearing statement, shall be served upon all other parties to the proceeding.

(e) In order to effectuate the purposes of this chapter, the panel or hearings officer may order that no prehearing statements be filed. [Eff 1/21/93; am 8/31/96] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-34 Prehearing conference and settlement of claim. (a) The panel or the hearings officer may order that a prehearing conference be conducted and attended by all parties to the proceeding. The purpose of the prehearing conference shall be to discuss settlement, simplify the issues, and facilitate the orderly progress of the hearing.

(b) At the prehearing conference, the parties shall disclose the progress made in reaching a settlement of the claim. The respondent shall have an affirmative duty to make an offer of settlement prior to the prehearing conference or, if no prehearing conference is ordered, prior to the hearing.

(c) At the prehearing conference or prior to hearing, the panel or the hearings officer may order that the parties attempt to mediate or resolve a claim and may refer a claim for mediation upon whatever terms and conditions appear reasonable.

(d) Whenever a claim has been settled, the parties shall submit a stipulation of dismissal or a stipulation of resolution, setting forth the terms of the settlement or resolution, to the panel or hearings officer for approval. [Eff 1/21/93; am 8/31/96] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-44 Panel's decision. When the hearing has been held before the panel, the panel, as expeditiously as possible, after the close of the hearing, shall issue its final decision and order together with separate findings of fact and conclusions of law. All findings of fact, conclusions of law, final decisions and orders issued by the panel shall be based upon the whole record and supported by reliable, probative, and substantial evidence, including facts on which the panel properly took judicial notice. All final decisions issued by the panel shall determine liability and damages concurrently. [Eff 1/21/93; am 8/31/96] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§674-6, 674-10)

§16-316-45 Recommended decision. When the hearing has been held before a hearings officer, the hearings officer, as expeditiously as possible, after the close of the hearing, shall file with the panel a recommended decision together with separate findings of fact, conclusions of law, and a recommended order. The decision, findings of fact, conclusions of law, and any order recommended by the hearings officer shall be based upon the whole record and supported by the reliable, probative, and substantial evidence, including facts of which the hearings officer properly took judicial notice. All recommended decisions by the hearings officer shall determine liability and damages concurrently. [Eff 1/21/93; am 8/31/96] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§674-6, 674-8)

§16-316-47 Recommended decision, request for review hearing before the panel. Any party adversely affected by the hearings officer's recommended decision, within ten days after the receipt of a copy of the decision, may request a review hearing before the panel. The request shall be filed with the panel and shall state specifically what points of law or fact the hearings officer has overlooked or misunderstood together with brief arguments on the points raised. An answer or reply by a party opposing the request shall be filed within ten days of receipt of the request for review hearing. Unless the time has been extended, no request for a review hearing before the panel shall be filed or accepted for filing after the time specified except by leave of the panel for good cause shown. [Eff 1/21/93; am 8/31/96] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-11, 674-6)

§16-316-48 Transmittal to panel. The hearings officer shall transmit to the panel the entire record together with the recommend decision and any timely filed request for a review hearing. [Eff 1/21/93; am 8/31/96] (Auth: HRS §91-2) (Imp: HRS §91-11)

§16-316-49 Review hearing before the panel. Whenever a party has timely requested a review hearing before the panel, all parties to the proceedings shall be afforded the opportunity to present oral argument to the panel concerning the recommended decision except where the panel enters an order providing for consideration of the matter without oral argument. The panel shall personally consider the whole record or portions of the record as are cited by the parties either in support of or in opposition to the recommended decision. Where oral argument is allowed, all parties shall be served with notice of the time and place of the review hearing at least seven days prior to the hearing. Within a reasonable time after argument has been heard or after consideration of the matter without oral argument, the panel shall issue a written final decision and order, either adopting, modifying, or reversing, in whole or in part, the hearings officer's recommended decision. All final decisions issued by the panel shall determine liability and damages concurrently. [Eff 1/21/93; am 8/31/96] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-11, 674-6)

§16-316-50 No request for a review hearing before the panel. When no request for a review hearing before the panel has been filed, the panel, within a reasonable time after the hearings officer's recommended decision has been filed, shall issue a written final decision and order, either adopting or modifying or reversing, in whole or in part, the hearings officer's recommended decision. The panel shall state with specificity in the final decision the reasons for any modification or reversal, in whole or in part, of the hearings officer's recommended decision. All final decisions issued by the panel shall determine liability and damages concurrently. [Eff 1/21/93; am 8/31/96] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§674-6, 674-8, 674-10)

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendments to chapter 16-316, Hawaii Administrative Rules, on the Summary page dated June 26, 1996, were adopted on June 26, 1996, following a public hearing held on June 24, 1996, after public notice was given in the Honolulu Advertiser on May 23, 1995.

These amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Peter L. Trask

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Individual Claims Review Panel

/s/ Kathryn S. Matayoshi

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Benjamin J. Cayetano
Governor
State of Hawaii

Date: 8/20/96

Aug 21, 1996

Filed